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Supreme Court, U.S.
FILED

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No.

In the
Supreme Court of the United States

Terrance J. Pitts,

Petitioner

v.

Dallas County Bail Bond Board

On Petition For Writ Of Certiorari
To The Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI

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8 pp

Question Presented

Whether a state court, when awarding fees pursuant to 42 U.S.C. §1988, is required by *Hensley v. Eckerhart*, 461 U.S. 424 (1983) to state with particularity the hours, the rate or the lodestar used to determine the fee ?

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Petitioner Terrance J. Pitts respectfully requests that a writ of certiorari issue to review the order of the Supreme Court of Texas. (Appendix Exh. A).

Opinions Below

The Seventh District Court of Appeals at Amarillo, Texas published two opinions in this case: *Pitts v. Dallas County Bail Bond Board*, 23 S.W.3rd 407 (Tex. App. - Amarillo 2000), *mod. on* rehearing in part, *pet. denied*. (Appendix Exh. B and Exh. C).

Statement of Jurisdiction

The Supreme Court of Texas denied Pitts' petition for review on September 28, 2000. This Court's jurisdiction is invoked under 28 U.S.C. §1257(a)and Article III, Section 2 of the United States Constitution.

Constitutional Provision and Statute Involved

United States Constitution, Article VI, Clause 2: This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

42 U.S.C. §1988 (b): In any action or proceeding to enforce a provision of sections 1977, 1977A, 1978, 1979, 1980 and 1981 of the Revised Statutes [42 U.S.C. §§ 1981-1983, 1985, 1986], title IX of Public Law 92-318 [20 USCS §§ 1681 *et seq.*],the Religious Freedom Restoration Act of 1993 [42 U.S.C. §§ 2000bb *et seq.*], title VI of the Civil Rights Act of 1964 [42 U.S.C. §§ 2000d *et seq.*], or section 40302 of the Violence Against Women Act of 1944 [42 U.S.C. § 13981, 28 U.S.C. § 1445(d)], the court, in its discretion, may allow the prevailing party, other than

the United States, a reasonable attorney's fee as part of the costs.

Statement of the Case

Pitts was awarded a judgment against the Dallas County Bail Bond Board pursuant to 42 U.S.C. §1983. (RR Plaintiff's Exh.23). Although the Dallas County Bail Bond Board appealed, the judgment was later affirmed by agreement.(RR Plaintiff's Exh.28) The issue of attorney fees under 42 U.S.C. §1988 was severed and tried separately. (RR Plaintiff's Exh.23 p.4).

On four separate occasions Pitts asked the trial court to state the hours and rate used calculate his attorney fees: opening argument; proposed findings; request for additional findings; and motion for new trial. (collected in Appendix Exh. H).

The trial court refused to state the hours, rate or lodestar. (Appendix Exh. F and Exh. G).

Four times on appeal to the Seventh District Court of Appeals at Amarillo, Pitts argued that the hours, rate and lodestar must be stated: Appellant's Brief , Appellant's Reply; Appellant's Motion for Rehearing; Appellant's First Further Motion for Rehearing. (collected in Appendix Exh. I).

In response, the Seventh District published the following statements:

"It is clear from *Von Clark*,

Johnson, and *Copper Liquor* that the trial court must make some determination of the extent of the services and the value of those services. However, they do not establish Pitts's conclusion that those determinations must be expressed empirically in the court's findings of fact. The fact that the fees awarded were within the range supported by the evidence leads us to the conclusion that the trial court did not abuse its discretion." (Appendix Exh. B at p.11).

and

"In his third point, Pitts challenges our holding that the trial court did not reversibly err in failing to state a specific number of hours and hourly rate on which the award of attorney's fees was based. He cites *Cheme Industries, Inc. v. Magallanes*, 763 S.W.2d 768 (Tex. 1989), for the proposition that the trial court "was required to make these findings." *Cheme* actually held that a trial court's refusal to make any findings of fact or

> conclusions of law after proper request is error. *Id.* at 772. Here, the trial court filed findings of fact and conclusions of law, just not the ones Pitts wanted. We reject Pitts's claim that we improperly found by implication the 'elements' of the reasonable hours and hourly rate. The hours reasonably expended and the attorney's hourly rate are not elements of a claim or defense, they are simply factors the trial court must consider in determining a "reasonable attorney's fee." 42 U.S.C. § 1988. We overrule Pitts's third point." (Appendix Exhibit C at p.25).

Pitts' sole point for review on appeal to the Texas Supreme Court was the failure of the courts below to perform the lodestar analysis required by this Court. (Appendix Exh. J). The Texas Supreme Court denied Pitts' petition for review without comment. (Appendix Exh. A).

Argument

Since 1983, this Court has consistently followed the lodestar analysis of *Hensley v. Eckerhart*, 461 U.S. 424 (1983). See *Blum v. Stenson*, 465 U.S.

886, 889 (1984); *Pennsylvania v. Delaware Valley Citizens' Council*, 478 U.S. 546, 563-564 (1986)(*"Delaware Valley I"*); *Pennsylvania v. Delaware Valley Citizens' Council*, 483 U.S. 711, 728 (1987) (*"Delaware Valley II"*); *Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989); *Missouri v. Jenkins*, 491 U.S. 274, 286 (1989); *Texas State Teachers Assn. v. Garland Independent School District*, 489 U.S. 782, 793 (1989); *City of Burlington v. Dauge*, 505 U.S. 557, 562 (1992).

This Court's adoption of the lodestar analysis cured previous problems in setting attorney's fees. As stated by the Honorable Justice White: "Setting attorney's fees by reference to a series of sometimes subjective factors placed unlimited discretion in trial judges and produced disparate results." *Pennsylvania v. Delaware Valley Citizens' Council*, 478 U.S. 546, 564 (1986) (*"Delaware Valley I"*).

Since his opening statement, Pitts has nine times urged that the hours, rate and lodestar be stated in this case. The courts below flatly refused to do so, choosing instead to rely solely on the 12 factors of *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). Most, if not all, of the factors cited in *Johnson v. Georgia Highway Express, Inc.* are subsumed in the lodestar analysis. *Delaware Valley I, supra*, at 566.

By their actions, the courts below have

abrogated *Hensley v. Eckerhart, supra,* and evidenced a complete disregard for this Court's authority to interpret federal law. The issue is not what the law is, but the whether the courts below will be permitted to ignore it. This case is unique in the both the simplicity and the magnitude of the issue presented. Nothing less than this Court's authority under Article VI, Clause 2 of the United States Constitution is at stake. Petitioner respectfully requests that this Court grant his petition for writ of certiorari and reverse and remand the case for proceedings not inconsistent with *Hensley*.

Respectfully submitted,

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